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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,771	06/06/2001	Robert Ellis	50P3883	7358
24337	7590	10/07/2005	EXAMINER	
MILLER PATENT SERVICES 2500 DOCKERY LANE RALEIGH, NC . 27606			LAYE, JADE O	
			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/875,771

Applicant(s)

ELLIS ET AL.

Examiner

Jade O. Laye

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's argument, filed 8/25/05, with respect to the rejection of cancelled Claim 20 has been fully considered and is persuasive. The finality of the previous Office Action has been withdrawn.

2. Applicant's arguments and amendments filed 8/25/05 regarding the amended claims, have been fully considered and made of record, but are considered unpersuasive. Accordingly, **THIS ACTION IS MADE FINAL.**

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 4, 8, 11, 14-16, 19, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over *David et al* (US Pat. No. 5,441,047) in view of *Flego et al.* (US Pat. No. 5,903,211).

Claim 1 recites limitations which will not be reiterated here (please refer to claim sheet). As to claim 1, *David et al* disclose a patient health monitoring system, in which the patient, located at a remote location, is monitored by a health care worker at a central station. The system allows the health care worker and patient to be in simultaneous interactive audio and

Art Unit: 2617

visual communication with each other (i.e., teleconferencing). Various medical monitoring and sensing equipment are present at the patient's home, thereby allowing transmission of various physiological data (i.e., blood pressure, EKG, blood sugar levels, etc.) relating to said patient. (Abstract; Col. 1, Ln. 14-25; Col. 5, Ln. 8-67 thru Col. 6, Ln. 1-14 & 43-54; Col. 8, Ln. 58-67 thru Col. 9, Ln. 1-11 & 25-67).

David goes on to further teach the use of a set top box (i.e., modulator 46) which can be used to receive/send audiovisual content (discussed above within response section) and the use of a cable television network (which, in the alternative, would suggest the use of a set-top box). (Col. 8, Ln. 39-Col. 9, Ln. 11). Moreover, *David's* system is coupled to various databases, which store the patient's physiological data and will merge (i.e., compare and/or store) said data with the patient's past records. (Col. 11, Ln. 55-58; Col. 13, Ln. 9-62). But, *David* fails to specifically teach allowing the user to select between an entertainment mode (i.e., cable, etc.) and medical mode. However, within the same field of endeavor, *Flego et al* disclose a similar system, which allows the user to select between an entertainment mode and a medical treatment mode. (Abstract; Col. 2, Ln. 52-Col. 3, Ln. 42; Col. 4, Ln. 32-43). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of *David* and *Flego* in order to provide a easily accessible user interface which allows the user to switch between entertainment and medical display modes.

Note: As to Claim 1, Applicant states that he has been "unable to identify a mechanism for entering the medical mode [in the Flego reference]." (Applicant's Response, Pg. 11). Then the Applicant goes on to say (within the same sentence) that Flego discloses "a selection by the patient by manipulation of a user input device (col. 4, lines 40-43)." Therefore, the Examiner

need not rebut this argument because Applicant has already done so. As stated by Applicant and the cited portion of Flego, the system does allow a user to manually choose to enter a medical mode. Therefore, Flego does in fact disclose this limitation.

*Applicant goes on to argue that “[t]here is no teaching or suggesting that one could switch to a data communication mode by simply beginning to collect data, per the amended claims.” (Applicant’s Response, Pg. 11). Without reaching the merits of this argument, the Examiner directs the Applicant to the plain meaning of his claim language which recites “...means for selecting the remote communication mode from the entertainment mode by either manually selecting to enter the remote communication mode from the user interface **OR** by commencing collection of physiological data...” As discussed earlier, Flego does disclose a manually method of invoking the medical mode. Therefore, since Applicant’s claims are directed in the alternative, the argument with respect to the other alternative is moot.*

Claims 8 and 16 are encompassed within the limitations of claim 1. Therefore, each is analyzed and rejected as previously discussed.

Note: Applicant appears to take issue with the Examiner’s “encompassed within the limitations of” language and appears to question whether or not each and every limitation has been given earnest consideration. In the interest of full disclosure, the Examiner did and does continue to give each and every claim full and earnest consideration. However, when the language of certain claims parallel each other or are inherently disclosed within each other, the Examiner will continue to utilize such language.

Claim 14 also corresponds to the system claim 1. However, it adds an additional limitation directed to a plurality of ports, which are used to communicate the physiological data

to the health care provider. As to this limitation, *David et al* further teach the use of sensors used to measure the patient's physiological data. (Col. 10, Ln. 35-51). It further adds limitations which parallel and/or are encompassed within those added to Claim 1. As to these limitations, each is analyzed and rejected as discussed under the rejection of Claim 1. Accordingly, the combined systems of *David* and *Flego* disclose all limitations of claim 14.

As to claim 4, *David et al* further disclose a health care provider can responsively communicate with the patient after receiving his or her physiological data. (Abstract; Col. 1, Ln. 14-25; Col. 5, Ln. 8-67 thru Col. 6, Ln. 1-14 & 43-54; Col. 8, Ln. 58-67 thru Col. 9, Ln. 1-11 & 25-67). Accordingly, the combined systems of *David* and *Flego* disclose all limitations of claim 4.

Claims 11 and 19 correspond to the system claim 4. Therefore, each is analyzed and rejected as previously discussed.

As to claim 15, *David et al* further teach the use of a control panel used to receive inputs by the user. (Fig. 10). Accordingly, the combined systems of *David* and *Flego* disclose all limitations of claim 15.

Claims 23-25 are encompassed within the limitations of claim 1. Thus, each is analyzed and rejected as discussed therein.

4. Claims 3, 10, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *David et al* in view of *Flego et al* as applied to claim 1 above, and further in view of *Flach et al*. (US Pat. No. 5,944,659).

Claim 3 recites the system of claim 1, wherein transmission media comprises the Internet. As discussed above, the combined systems of *David* and *Flego* disclose all limitations of claim 1, but fail to specifically recite the use of the Internet. However, within the same field of endeavor, *Flach et al* disclose a similar system in which the patient and healthcare provider interactively communicate via the Internet. (Col. 7, Ln. 29-43). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of applicant's invention to combine the systems of *David*, *Flego*, and *Flach* in order to provide a remote monitoring system which utilizes the internet as a communications medium, thereby providing a more expansive and efficient method of communication.

Claims 10 and 17 correspond to the system claim 3. Therefore, each is analyzed and rejected as previously discussed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 2617

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jade O. Laye whose telephone number is (571) 272-7303. The examiner can normally be reached on Mon. 7:30am-4, Tues. 7:30-2, W-Fri. 7:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner: Jade O. Laye
September 23, 2005.



VIVEK SRIVASTAVA
PRIMARY EXAMINER

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6/6/01

